

N L INDUSTRIES, INC.

IBLA 72-40

Decided April 6, 1973

Appeal from decision of Eastern States Land Office denying request for preference right lease (BLMA 011265).

Affirmed.

Mineral Lands: Leases

Where appellant has not alleged that a discovery of a valuable deposit of barium sulphate has been made within the boundaries of the land embraced by its terminated prospecting permit, equity will not be invoked to allow a tardy filing for a preference right lease.

APPEARANCES: W. H. Fogleman, Jr., Esq., Houston, Texas, for appellant.

OPINION BY MR. STUEBING

N L Industries, Inc., formerly National Lead Company, appeals from a decision of the Eastern States Land Office, dated May 20, 1971, denying its request to file an application for a preference right mineral lease for acquired lands embraced in its terminated barium sulphate prospecting permit, BLMA 011265. The Land Office denied the request to file the application because the appellant had failed to file before the expiration of the permit as required by the terms of the prospecting permit.

Under the authority of section 402 of the President's Reorganization Plan No. 3 of 1946, 60 Stat. 1099, and the regulations issued thereunder, approved December 15, 1947 (43 CFR 200.31 et seq.), the prospecting permit was issued to The Milwhite Company, Inc., on July 3, 1950, for lands located in the Ouachita National Forest, Montgomery County, Arkansas. The Milwhite Company, Inc., assigned the permit to N L Industries on November 21, 1955, and on April 27, 1956, the Bureau approved this assignment. The permit expired on December 31, 1970.

In a letter dated February 19, 1971, the Bureau informed appellant that its permit had expired in accordance with 43 CFR 200.35 (1949) which provided that prospecting permits shall not exceed 20 years' duration. Appellant acknowledged receipt of the Bureau's

letter in its letter of February 25, 1971, to the Bureau, in which it requested that the Bureau note its application for a preference right lease and send it the necessary forms for filing such lease. The company did not appeal the Bureau's determination that the permit had expired. On March 11, 1971, the Bureau responded to appellant's request by sending appellant a letter concerning the filing of a prospecting permit and enclosing an application form.

On May 7, 1971, appellant requested that it be allowed the right to file a preference right mineral lease application for 60 acres of land previously encompassed by the prospecting permit. On May 20, 1971, the Land Office rendered its decision refusing to grant appellant the right to file because it had failed to comply with section 13 of the prospecting permit which provided that the time for filing the lease application expired with the lapse of the permit.

The prospecting permit held by appellant required that the application for the lease be filed prior to the expiration of the permit. The current regulation, 43 CFR 3521.1-1(a) provides that an application for a preference right lease shall be filed not later than 30 days after the permit expires. The appellant has failed to meet either time requirement, and has not shown that it is entitled to the relief prayed for.

This Board has held that late filing of an application for a preference right lease may be waived when permitted under 43 CFR 1821.2-2(g). 1/ William R. White, 1 IBLA 273, 78 I.D. 49 (1971). The White case is distinguishable, however, from the case in issue. In White, the Director, Geological Survey, reported that timely discoveries of the valuable sodium deposits had been made on the land involved in the subject permit as required by the statute, and he therefore recommended the issuance of a preference right lease. In the instant case, appellant has made no showing that valuable deposits of minerals have been discovered within the area previously embraced by its permit. Conversely, it admits that "[s]tanding alone, the tract for which Preference Right Lease is requested has little or no economic value."

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1/ This regulation provides that an authorized officer may consider as being timely filed a document which was filed after the expiration date except where (1) the law does not permit him to do so, (2) the rights of a third party or parties have intervened, (3) the authorized officer determines that further consideration of the document would unduly interfere with the orderly conduct of business.

N L Industries, Inc., alleges that it has done substantial work during the period of the permit which would support its application for a preference right lease. The only indication of work performed by appellant was found in a letter to the Assistant Manager, Bureau of Land Management, in which appellant explained that it had conducted geographical mapping and prospecting of land covered by the permit and also on adjacent land held by mineral claims and mineral leases. It asserted that after relinquishing 800 acres embraced by the permit, the retained lands "covered formations favorable to barite deposition."

Appellant also stated that Mr. Dinsmore of the U.S. Geological Survey had urged it to do work necessary to further define the valuable areas on the prospecting lands with the object of seeking a preference right lease. In its February 11, 1970, letter to Dinsmore, appellant stated that it controlled the significant portion of economic barite in the area. It added that when these properties became economically valuable, it would mine and produce barite in the best "minerlike manner". We find that these allegations concerning preliminary work and economic potential fail to assert that a mineral discovery of the requisite character has been made. See E. C. Beede, 7 IBLA 177 (1972).

On February 8, 1973, this Board wrote appellant a letter explaining that it was uncertain as to whether appellant was alleging that a discovery of valuable deposits of barite had been made on the lands previously embraced by the prospecting permit during the time when the permit was in effect. The Board pointed out to appellant that its right to receive a preferential right to lease could be based only on an assertion of such discovery. Absent this necessary assertion, it would be an exercise in futility for this Board to afford appellant equitable relief from the consequences of untimely filing. The Board allowed appellant until March 15, 1973, to respond as to whether, in fact, it had discovered any valuable deposit of barite within the lands in question during the term of the permit.

In its reply of March 7, 1973, to the Board's inquiry, appellant wrote that there are proven mineable barite reserves on adjacent property owned or leased by appellant. Regarding the 60 acres in question, appellant wrote:

Continuation of the mineralized horizon along the strike length is a logical geological expectation and the mineralized zone is indicated to continue onto the 60 acre portion of the Prospecting Permit that Baroid [2/]

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2/ Baroid is a division of N L Industries, Inc.

now wishes to convert to a preference right lease. Surface exposures in the 60 acre area covered by the Permit, though intermittent, prove the existence of the mineralized horizon. \* \* \*

Appellant also explained that acquisition of the 60 acre lease was essential for any mining program which it might formulate and that the development of the adjacent property and development of the 60 acres were interdependent.

This response does not contain a direct affirmative allegation that a discovery of a valuable mineral deposit has been made within the 60 acre tract. Absent an allegation of discovery, there is no basis for entertaining a tardy application to lease, even assuming that the tardiness could be excused.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing, Member

We concur:

Martin Ritvo, Member

Joseph W. Goss, Member.

